knowledge, i.e., the particular means by which he or she received the information. *Aguilar v. Texas*, 378 U.S. 108, 114-15 (1964), as later explained and refined in *Spinelli v. U.S.*, *393 U.S. 410, 415-*19 (1969).

In the early 1980s, this Court abandoned *Aguilar-Spinelli*'s two-part test in favor of a "totality of the circumstances" analysis. *Illinois v. Gates*, 462 U.S. at 232-38. Stating that probable cause is a fluid concept that is not readily or usefully reduced to a neat set of legal rules, this Court in *Gates* explained that it actually was returning to the analysis that had traditionally informed probable cause determinations. However, this Court emphasized that it was ***not*** discarding the *Aguilar-Spinelli* factors, though:

> We agree ... that an informant's "veracity," "reliability," and "basis of knowledge" are all highly relevant in determining the value of his report. We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case ... Rather, they should be understood simply as closely interwined issues that may usefully illuminate the common-sense, practical question whether there is "probable cause" to believe that contraband or evidence is located in a particular place.

Id. at 230.[1]

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[1] *See also Alabama*, 496 U.S. at 328 ("*Gates* made clear, however, that those factors that had been considered critical under *Aguilar* and *Spinelli* – an informant's 'veracity,' 'reliability,' and 'basis of knowledge'—remain 'highly relevant in determining the value of [a hearsay declarant's information].'"; *U.S.*

Thus, the federal test fir ensuring the reliability of a hearsay statement in a probable cause determination allows the use of hearsay only if the "totality of the circumstances" corroborates the hearsay. *Gates*, 462 U.S. at 230-31. To determine whether the totality of the circumstances corroborates the hearsay, a magistrate considers whether there is a fair probability, given all of the circumstances, including the "veracity" and "basis of knowledge" of the person supplying the hearsay information, that evidence of a crime will be found in a particular place. *Gates*, 462 U.S. at 238.

Furthermore, the reliab'lity of hearsay under *Gates*' totality of the circumstances test can be established in a number of ways, including where: (1) the informant has given correct information in the past; (2) independent police investigation corroborates the informant's statements; (3) some basis for the informant's knowledge is demonstrated; or (4) the informant predicts conduct or activities by the suspect that are not easily predicted. *Jaggers*, 687 N.E.2d at 181 (Ind. 1997) (quoting *Gates*, 462 U.S. at 238).[2]

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v. Pritchard, 745 F.2d 1112, 1120 (7th Cir. 1984) ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of the person supplying the hearsay information."); *State v. Allen*, 525 N.E.2d 1267, 1270 (Ind. Ct. App. 1988) ("an informant's truthfulness and basis of knowledge are still important considerations"); *Culver v. State*, 519 N.E.2d 196, 198 (Ind. Ct. App. 1988) (The two prongs of the *Aguilar-Spinelli* test are still "relevant considerations in the totality of the circumstances analysis" under *Illinois v. Gates*).

[2] *See also U.S. v. Jones*, 208 F.3d 603, 609 (7th Cir. 2000) ("Where the credibility of an informant is at issue, we consider (1) the personal observations by the informant, (2) the degree of detail given, (3) independent police corroboration of the informant's information, and (4) the informant testifying at the probable cause hearing."); *U.S. v. Singleton*, 125 F.3d 1097.

However, this Court in *Gates* was also unequivocal that uncorroborated hearsay from an informant whose credibility is unknown cannot suffice to satisfy the probably cause requirement for the issuance of a search warrant. *Gates*, 462 U.S. at 227. The hearsay must exhibit some hallmarks of reliability. *Id.*

A reviewing court should also consider whether the hearsay informant personally appeared and presented an affidavit or testified before the warrant-issuing magistrate, thus allowing the magistrate to evaluate the informant's knowledge, demeanor and sincerity. *U.S. v. Reddrick*, 90 F.3d 1276, 1281 (7th Cir. 1996).

B. Application of *Illinois v. Gates*' "Totality of the Circumstances" Test to the Present Case.

In the present case, Cpl. Matt Campbell did not offer sufficient information in his Affidavit for Search Warrant to establish 8-year old Callie Richard's reliability as a hearsay informant under *Illinois v. Gates'* "totality of the circumstances test."

(1.) "Credibility" (or "Veracity") factor under *Aguilar-Spinelli.*

Cpl. Campbell's Affidavit does not establish Callie Richard's credibility or veracity for being truthful under the first *Aguilar-Spinelli* factor. It should be initially noted that Cpl. Campbell did not indicate anywhere in his Affidavit that he

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1103 (7th Cir. 1997) ("Some of the factors which demonstrate that an informant's information is sufficiently reliable to support the magistrate's issuance of a warrant include: (1) personal observation by the informant; (2) the degree of detail given; (3) independent police corroboration of the informant's information; and (4) the informant's testifying at the probable cause hearing.").

believed 8-year old Callie to be a credible and truthful child. There is absolutely no indication in the Affidavit that Cpl. Campbell asked the principal and/or school counselor at Riddle Elementary School as to whether Callie had ever had occasion to be untruthful. Callie's motivation for allegedly coming forward and advising her school counselor of these allegations is also absent from the Affidavit. Furthermore, there is no indication in the Affidavit that Callie personally appeared before the warrant-issuing judge so he could personally assess her credibility, nor did Callie sign her name to the Affidavit. Essentially, young Callie Richard was not a tried and tested hearsay declarant.

Cpl. Campbell's Affidavit contains no objective information establishing Callie's credibility. The trial court's finding, as well as the Indiana Court of Appeal's finding, that the Affidavit "appears on its face to be credible" is too conclusory. (App. at 255) A blanket assertion that a hearsay declarant appears conclusively credible leaves totally undisclosed the basis on which the judgment is made. There simply must be a more comprehensive statement of underlying facts upon which the warrant-issuing judge can make an independent determination that the hearsay declarant is credible. With such facts, the warrant-issuing judge can challenge the reasonableness of the officer's belief regarding the hearsay declarant's reliability. Eyewitnesses and crime victims are often themselves criminals, drug addicts, liars and/or mischievous children who volunteer information to the police for reasons other than for the call of civic duty.

When the further possibility is considered that a police officer has not made a good faith assessment of the hearsay declarant's credibility, or may even know or suspect him/her to be unreliable, the dangers in acceptance of vague averments of credibility become even more obvious. Automatic judicial

acceptance of credibility may tempt police officers to make superficial averments of credibility without proper support; and some officers, while they may be above wholesale fabrication, may not be averse to some stretching of the truth on occasion.

The trial court reasoned that since Callie came "forward as a citizen witness" the "rules concerning proof of credibility or corroboration do not automatically apply." (App. at 255) This is a material misstatement of the law because it is well-settled that *Aguilar-Spinelli*'s credibility factor, as well as the factual basis factor, are still "highly relevant" considerations when determining the overall value of a hearsay declarant's information.[3] If the rules concerning Callie's credibility do not "automatically apply" as the trial court asserted, which was approved by the Indiana Court of Appeals, then it must follow *a fortiori* that the affidavit of an officer, known by the warrant-issuing judge to be honest and experienced, stating that contraband is located in a certain place must also be acceptable. It would be quixotic if a similar statement from an honest informant, but not one from an honest officer, could furnish probable cause. But this Court has repeatedly held that the unsupported assertion or belief from an honest officer does not satisfy the probable cause requirement.[4]

Furthermore, even assuming *arguendo* that Callie came to her school counselor on her own, Callie did ***not*** come to Cpl. Campbell—he came to her. The information contained in Cpl. Campbell's Affidavit was procured during Callie's custodial interrogation at the school. From the perspective of a reasonable

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[3] *See* footnote 1, *supra* (citing to cases discussing the continued relevance of the *Aguilar-Spinelli* factors in *Gates*' "totality of the circumstances" test).

[4] *See, e.g., Whitely v. Warden*, 401 U.S. 560, 564-68 (1971); *Nathanson v. U.S.*, 290 U.S. 41, 46-47 (1933).

8-year old in Callie's position, the situation was inherently coercive due to the presence of three authority-type figures: (1) a school counselor; (2) a principal; and (3) a law enforcement officer. Once in custody, which simply means that Callie would not have felt free to leave, volunteerism was absent. In addition, at the tender age of eight (8), Callie's immaturity and inexperience put her at a great disadvantage in confronting a police interrogation. A very young child, like Callie, is not equal to the police in knowledge and understanding of the consequences of answering the questions being asked. Thus, Callie's hearsay information was not objectively credible under *Aguilar-Spinelli*'s first factor.

(2.) "Factual basis" (or "basis of knowledge") factor under *Aguilar-Spinelli*.

Cpl. Campbell's Affidavit does not establish an objective factual basis, or basis of knowledge, for the hearsay information that Callie Richard furnished him under *Aguilar-Spinelli*'s second factor. It should be initially noted that Petitioner Carl Richard's name does not appear anywhere in Cpl. Campbell's Affidavit.[5]

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[5] *See, e.g., U.S. v. McNeal*, 82 F.Supp.2d 945, 958 (S.D. Ind. 2000) (invalidating the probable cause affidavit and reasoning that "[t]he affidavit in this case, however, contains insufficient information to establish a fair probability that [the defendant] actually lived at the residence at 7150 N. Lakeside Drive. Any inference that [the defendant] lived at the Lakeside Drive address is based solely on [the police officer's] conclusory opinion that the residence was under [the defendant's] control. The affidavit lacks any factual basis for this conclusion. There is no indication that utility bills or records of property ownership were relied upon, that a vehicle registered to [the defendant] was seen parked outside the residence, that anyone reported [the

The word "they" is stated three times on page 2 of the Affidavit; however, this word is open to interpretation since it could be referring to any number of persons: parents; brothers/sisters; relatives/friends living at the residence; overnight guests; etc. Furthermore, Cpl. Campbell's Affidavit does not indicate that he had personal knowledge of any of Callie's allegations, nor did he at any time prior to the execution of the search warrant personally observe the substance alleged to be "marijuana" or independently investigate Callie's allegations of criminal activity.

Essentially, the "factual basis" factor is not concerned with Callie's honesty. It is concerned, rather, with conclusory validity. Even assuming Callie had credibility amounting to sainthood, the warrant-issuing judge still may not accept her bare conclusions anymore than he could accept the bare conclusion of a sworn, known and trusted police-affiant. To do so would amount to an unconstitutional delegation of the decision-making function to Callie, which the Fourth Amendment lodges exclusively in the warrant-issuing judge himself.

The factual basis consideration ***assumes*** Callie's veracity for truthfulness, and then proceeds to probe and test her conclusion: What were the raw facts upon which 8-year old Callie based her conclusions? How precisely did she obtain those facts? Did she imagine or fabricate her allegations to spite her father? When and what precisely did she see, hear, smell or touch firsthand? If she heard the facts from someone else, what makes that third person credible and how did that third person come by the knowledge? Was she forced to say what she allegedly told

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defendant] lived at the residence, or even that [the defendant] was seen coming and going from the house.").

Cpl. Campbell under the threat of punishment or coercion by him or an unknown third-party? The warrant-issuing judge was required to ascertain the source for the raw data provided by Callie's senses and then weigh that data for himself. He is not concerned with that part of Cpl. Campbell's Affidavit ***about*** Callie but with the recitation of the story coming from Callie. Thus, even assuming *arguendo* that Callie was "credible" under the first *Aguilar-Spinelli* factor, there remains a complete void of information bearing on the "factual basis" factor.

For example, there is an absence of objective facts from which the warrant issuing judge could have concluded that an 8-year old child in third grade, like Callie, had a reasonable basis for claiming the substance she saw was "marijuana." There is no objective indication Callie spoke with personal knowledge that she actually knew the substance in question to be "marijuana." The objective reader is merely told that Callie "believed" the substance was marijuana, which indicates that she was speculating. The Affidavit does not reveal exactly how Callie reached this conclusion. If Callie had even a minor inkling of certainty regarding the substance she would have stated that "it was" marijuana. And, if Callie was only speculating, then her conclusion that the substance was "believed" to be "marijuana" may have been based on rumor, gossip or an opinion from an unknown third-party. We do not know, and, accordingly, neither did the warrant issuing judge.

Second, the trial court made the following finding, which was approved by the Indiana Court of Appeals, with respect to Callie's alleged basis of knowledge:

> The specificity of the information includes specific locations (a white case in an identified kitchen drawer) activities of concealment and of processing a volume of

marijuana, and clear statements of limitation of knowledge (for instance not knowing whether plants were now in the "secret room" in the basement), all in a location with which the officer was familiar.

(App. at 256)

Nonetheless, the quantum of detail in the Affidavit describing the barn, house and objects therein does not eliminate the possibility of Callie's conclusion that she "believed" the substance to be "marijuana" was based upon fabrication or unjustified speculation on her part. The trial court essentially said that even if we entertain some doubts as to Callie's credibility, her explicit and detailed descriptions entitle her information to greater weight than what might otherwise be the case. However, as one court has noted, "If the informant were concocting a story out of the whole cloth, he/she could fabricate in fine detail as easily as with rough brush strokes. Minute details tell us nothing about veracity." *Stanely v. State*, 313 A.2d 847 (Md. App. Ct. 1974).

The simple fact that Callie had been physically present on the premises is not enough under the factual basis factor to support her allegations of criminal activity. The notion that great detail implies personal observation rather than the overhearing of rumor or gossip, presupposes a honest hearsay declarant. Perhaps the quantum of detail that Callie allegedly provided [illegible]. Campbell eliminates the possibility that she was relating what someone else told her, for it is unlikely that such an elaborate description would have been passed to her from some other person. But the detail does not eliminate the possibility that her conclusion about the substance alleged to be "marijuana" was based upon unjustified speculation on her part, perhaps involving a rumor she had heard. And, if detail rests on personal observations of someone else, the objective reader knows nothing of the third person's honesty or

source(s) of information. At best, the details only merit the conclusion that Callie had been present on the premises.

Third, the substance in the barn could just have easily been hay, straw or some other plant material and the substance "in the drawer near the stove" could just have easily been oregano, parsley flakes or some other cooking spice. In his deposition, Cpl. Campbell agreed that children of Callie's young age have tendencies to fabricate things and tell imaginative stories. (App. at 32)

Fourth, Cpl. Campbell had independent knowledge of the property since he had previously attended Richard's wedding on the property itself nearly one (1) year prior to the October 13, 2003 search. Anyone at the wedding could have easily described the layout of the property. It is also plausible that Cpl. Campbell's wife gave him a description of the property since she and Richard's wife, Charla Richard, were "best friends" at the time the Affidavit was drafted. (App. at 78) Thus, Callie's description of the barn and house is of no persuasive significance to the factual basis factor.

Finally, Callie's prior contact with the alleged "marijuana" is the closest the affidavit comes to providing a factual basis for the information she furnished. However, the statement in the Affidavit that Callie "knows what it is because she has been around it before" does not reveal an objective factual basis as to ***how*** she came to the conclusion that the substance was in fact "marijuana" on the prior occasion, which leaves the objective reader with yet another question to ponder. Both the trial court and the Indiana Court of Appeals failed to address this critical question. Again, Callie's conclusion that the substance was "marijuana" on a prior occasion may have been based on mere rumor, gossip or an opinion from an unknown third-party.

Cpl. Campbell's Affidavit also fails to establish a time-frame as to ***when*** Callie had allegedly "been around it before." Was Callie 8-years old at the time or was she, possibly, 3-years old? The affidavit also fails to mention ***where*** Callie had allegedly "been around it before." Could a mischievous schoolmate have shown Callie oregano or some other harmless plant substance in a baggie on the playground at school and claimed it to be marijuana as a prank? Cpl. Campbell's Affidavit keeps the answers to these questions and other possibilities shrouded in mystery.

Thus, Cpl. Campbell's affidavit does not provide a sufficient "factual basis" for the hearsay information that Callie allegedly furnished under *Aguilar-Spinelli*'s second factor.

(3.) "Totality of the circumstances" under *Illinois v. Gates.*

Cpl. Campbell's Affidavit does not contain sufficient information establishing that the "totality of the circumstances" corroborates Callie's alleged hearsay statements under *Illinois v. Gates.*

First, *Aguilar-Spinelli*'s "credibility" and "factual basis" factors, which remain highly relevant considerations under *Gates*' totality of the circumstances calculus, are both lacking as previously discussed in Sections VI.B(1) and (2), *supra.*

Second, Cpl. Campbell's Affidavit does not reveal whether Callie had ever provided correct information to Cpl. Campbell or any other police officer in the past. Essentially, 8-year old Callie was not a tried and tested hearsay declarant.

Third, the face of the Affidavit does not indicate whether Cpl. Campbell conducted an independent investigation to

corroborate any of the information allegedly provided by Callie.[6] In fact, Cpl. Campbell testified that talking to Callie at Riddle Elementary School was his first step with respect to his investigation. Cpl. Campbell also testified that he did not bother to take any investigative steps after he spoke with Callie, essentially shirking his duty to investigate. Cpl. Campbell questioned Callie at the school for approximately 15-20 minutes, drove to the Rochester Police Department to draft the Affidavit and then presented it to the warrant-issuing judge—all in ***fifty-eight (58) minutes***. There certainly was enough time for Cpl. Campbell to take some minimal steps towards the developing of ***some*** independent data in support of Callie's hearsay allegations; yet, he did absolutely nothing. Instead of conducting minimal investigation or doing surveillance, Cpl. Campbell rushed to court, recklessly seeking to invade the privacy of a citizen and to search his home.

Furthermore, the Affidavit is silent as to the existence of any exigent circumstances and/or shortage of time to investigate, which would have made corroboration impossible or too burdensome to undertake. As in Cpl. Campbell's case, where there was an opportunity for inquiry and investigation, inquiry and investigation should be made. Cpl. Campbell was not warranted in relying upon circumstances deemed by him suspicious, when the means were at hand of either verifying or dissipating those suspicions without risk, and he neglected to avail himself of those

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[6] *See, e.g., Edwards v. Cabrera*, 58 F.3d 290, 293 (7th Cir. 1995) ("The Court [in *Gates*] directed that not only are the informant's "reliability," "veracity," and "basis of knowledge" to be considered, but also the degree to which the investigating officers can corroborate the tip.").

means. Indeed, Callie Richard's alleged reliability quickly evaporates when one considers the following suspicious circumstances, all of which existed at the time Cpl. Campbell drafted the Affidavit:

(i) Callie was an 8-year old child and in third grade when she was interrogated by Cpl. Campbell. Great inequity existed between Cpl. Campbell and a child of Callie's tender age.[7] (App. at 40)

(ii) Cpl. Campbell, the principal and counselor (all three authority-type figures) interrogated Callie in a room at the school outside the presence of her parents. The situation produced an inherently coercive atmosphere from the perspective of a reasonable 8-year old in Callie's position. No statement by Callie could truly be the product of her free choice. (App. at 37)

(iii) Cpl. Campbell knew that there was an ongoing "paternity suit" between Carl Richard and his ex-wife, Carmen Richard,

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[7] *See, e.g.*, Welsh S. White, *Miranda's Waning Protections*, 202 (2001) (Stating that the mental condition of a hearsay declarant should be considered when determining whether the information was credible. Social scientists have long maintained that "special protections must be afforded juveniles and to all other persons of below-average intelligence, to immunize the risk of untruthful admissions due to their vulnerability to suggestive questioning." During the 1950s and 1960s, the U.S. Supreme Court began to take into account a witness'/suspect's vulnerability and weakness to help determine whether a statement was voluntary or not.).

when he drafted the Affidavit. Cpl. Campbell agreed inn his deposition that it was entirely possible that Carmen Richard, or someone else, could have told Callie to make these allegations against her father, Carl Richard, in order to spite him. (App. at 551-52)

(iv) Cpl. Campbell agreed in his deposition that it is possible that the substance in the barn that Callie allegedly identified as "marijuana" could have been hay, stray, corn stalks or some other form of plant material. (App. at 47-48)

(v) Cpl. Campbell admitted in his deposition that it is possible that Callie could have been mistaken with regard to the identification of the substance alleged to be "marijuana." (App. at 44)

(vi) Based on his experience as a law enforcement officer, Cpl. Campbell agreed in his deposition that young children of 8-9 years of age or younger have tendencies to fabricate things and tell imaginative stories. (App. at 32)

(vii) Cpl. Campbell believed Callie was qualified to identify the substance alleged to be "marijuana" based on "numerous rumors" concerning Richard's farm, which occurred "years ago" "before Callie was born." (App. at 45-46)

(viii) Cpl. Campbell never personally observed to be "marijuana" prior to the execution of the search warrant. Thus, Cpl. Campbell could only speculate as to (a) whether the substance "believed" to be marijuana actually existed and (b) whether it was in fact "marijuana" in the first place. (App. at 11)

Certainly, the exclusionary rule did not require Cpl. Campbell to obtain absolute verification of all sources supporting his Affidavit, nor did it require Cpl. Campbell provide enough information to meet the standard of proof need for a conviction. Yet, while a claim of firsthand observation may ordinarily boost the credibility of an allegation of criminal activity, Callie's alleged firsthand knowledge could have just as easily been fabricated under the circumstances to make the underlying allegations appear more credible. Absent corroboration by Cpl. Campbell, Callie's allegations, no matter how specific, amount to little more than an anonymous tip and were insufficient to establish probable cause.

Fourth, the factual basis of Callie's knowledge concerning the identification of the substance alleged to be "marijuana" was based solely on the statement in the Affidavit that "she had been around it before." However, as outlined in Sections VI.B(1), *supra*, this was insufficient to establish Callie's reliability.

Finally, Callie never personally appeared before the warrant-issuing judge, which would have permitted him the opportunity to at least evaluate Callie's knowledge, demeanor and sincerity. Based on Cpl. Campbell's "just trust me approach," the judge took a huge leap of faith with respect to the reliability of Callie's alleged hearsay statement when he issued the warrant.

The warrant-issuing judge simply rubber-stamped Cpl. Campbell's representations.

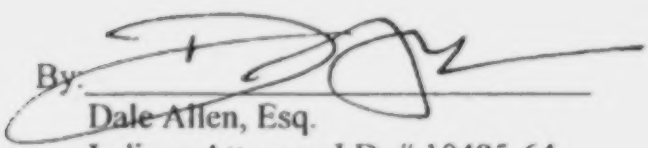
In summary, Cpl. Campbell's Affidavit does not contain facts sufficient to establish Callie's credibility. Nor did Cpl. Campbell corroborate any information relayed to him by Callie that connected Carl Richard with alleged unlawful activity. Considering the totality of the circumstances under *Gates*, the determination of probable cause in this case lacked a substantial basis and the search of Richard's residence and property was unlawful under the Fourth Amendment.

VII. CONCLUSION

Based on the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

ALLEN LAW OFFICES



By: _____

Dale Allen, Esq.
Indiana Attorney I.D. # 10485-64
701 E. Lincolnway
Valparaiso, Indiana 46383
Telephone: (219) 462-3998
Facsimile: (219) 531-0683
Counsel for Petitioner, Carl Richard

VIII. CERTIFICATE OF SERVICE

I certify that the foregoing Petition for a Writ of Certiorari (Petitioner's Brief) and attached Appendix were served upon the following counsel by first-class United States mail, postage prepaid, this 28 day of June, 2005:

Mr. Richard A. Brown, Esq.
FULTON COUNTY PROSECUTING ATTORNEY
815 Main Street, Room 301
P.O. Box 237
Rochester, Indiana 46975

Mr. Steve Carter, Esq.
Mr. George P. Sherman, Esq.
OFFICE OF THE INDIANA ATTORNEY GENERAL
Indiana Government Center South, Fifth Floor
302 W. Washington Street
Indianapolis, Indiana 46204

By: _____
Dale Allen
Indiana Attorney I.D. # 10485-64

ALLEN LAW OFFICES
701 E. Lincolnway
Valparaiso, Indiana 46383
Telephone: (219) 462-3998
Facsimile: (219) 531-0683
Counsel of Record for Petitioner, Cart Richard

Supreme Court, U.S.
FILED

No. 05-496 JUN 28 2005

OFFICE OF THE CLERK

In the Supreme Court of the United States

CARL RICHARD,

PETITIONER,

vs.

STATE OF INDIANA,

RESPONDENT

PETITIONER'S APPENDIX

DALE ALLEN
Indiana Attorney I.D. # 10485-64
Allen Law Offices
701 E. Lincolnway
Valparaiso, Indiana 46383
Telephone: (219) 462-3998
Facsimile: (219) 531-0683
Counsel of Record for Petitioner,
Carl Richard

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STATE OF INDIANA) IN THE FULTON CIRCUIT COURT

) SS:

COUNTY OF FULTON) 2004 TERM

STATE OF INDIANA,

vs. CAUSE NOS.: 25C01-0310-FC-00073

CARL RICHARD

STATE OF INDIANA,

vs. CAUSE NOS.: 25C01-0310-FC-00074

CARLA RICHARD

ORDER

This cause was presented upon the Defendant's Motion to Suppress heard in open Court on the 10th day of February, 2004. Now the Court being advised, determines as follows:

1. The Motion to Suppress is DENIED.
2. The Miranda waiver requirements for children complained of by the defendants during the interview with the child Callie is not a requirement for a witness interview; it is a requirement only in

the event of an admission or confession by a child concerning criminal activity by the child. The remedy in these settings, of course, is suppression of the evidence in the child's delinquency or waiver trial. That this clearly is the purpose of the statute is apparent from the lack of caselaw on the topic coupled with the clear reference in Section 3 of the Code referring to admission of the evidence against the child.

3. The Court concurs with the State's position that Callie comes forward as a citizen witness so that rules concerning proof of credibility or corroboration do not automatically apply. Testing the totality of the circumstances, the report appears on its face to be credible. It comes from an 8 year old and contains no signs of reporting that are inherently incredible as the result of a child's fabrication. The child did not come to the police originally but instead took similar information to her school counselor. The specificity of the information includes specific locations (a white case in a identified kitchen drawer), activities of concealment and of processing a volume of marijuana, and clear statements of the limitation of knowledge (for instance not knowing whether plants were now in the "secret room" in the

basement), all in a location with which the officer was familiar.

4. The Court additionally concurs with the State's position that, even if there were a reason for the officer to have disbelieved these statements, it is apparent that the reviewing Judge did not disbelieved them and authorized a warrant based upon them. The Officer's execution of the warrant was therefore a good faith pursuit of his duties.

SO ORDERED, this 25th day of February, 2004.

_____

Douglas B. Morton, Judge
Fulton Circuit Court

STATE OF INDIANA) IN THE FULTON CIRCUIT COURT

) SS:

COUNTY OF FULTON) 2004 TERM

STATE OF INDIANA,

vs. CAUSE NOS.: 25C01-0310-FC-00073

CARL RICHARD

ORDER

This cause was presented by trial to the Court upon Count I, Dealing in Marijuan as a Class C Felony and Court II, Dealing Marijuana as a C Felony on this 6th day of April, 2004. Now the Court be advised determines as follows:

1. Upon evidence presented, the Court finds beyond a reasonable doubt that the defendant Carl Richard is GUITLY of dealing in marijuana as alleged in Count I, by possession of marijuana in an amount of greater than 10 pounds with intent to deliver.
2. Upon evidence presented, the Court finds beyond a reasonable doubt that the defendant Carl Richard is GUILTY of dealing in marijuana as alleged in

Count II, by the manufacture of Marijuana in an amount greater than 10 pounds.

The Court now orders the Fulton County Probation Department to prepare a pre-sentence report and recommendation for sentencing upon the Court's verdicts, sentencing to be in conjunction with the defendant's guilty plea upon Court III. The Court tentatively schedules sentencing hearing for 9:00 a.m., Wednesday, April 28, 2004.

SO ORDERED, this 6th day of April, 2004.

_____

Douglas B. Morton, Judge
Fulton Circuit Court

CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STAE HOUSE, INDIANAPOLIS, IN 46204

317-232-1930 • FAX 317-232-8365

David C. Lewis

Clerk

MATTHEW BARRETT
701 E. LINCOLNWAY

VALPARAISO, IN 46383

25A05-0405-CR-00243
Lower Court Number:
25C010310FC73

RICHARD, CARL -V- STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS has on this day 1/14/05 ISSUED THE ENCLOSED OPINION:

WITNESS my name and the seal of said Court,

This 14TH day of JANUARY, 2005

Clerk, Supreme Court, Court of Appeals and Tax Count

CLERK

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FOR PUBLICATION

ATTORNEYS FOR APPELLANT:	ATTORNEYS FOR APPELLEE :
MATTHEW D. BARRETT DALE ALLEN Allen Law Offices Valparaiso, Indiana	STEVE CARTER Attorney General of Indiana GEORGE P. SHERMAN Deputy Attorney General Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CARL RICHARD,	)	
	)	
Appellant-Defendant,	)	
	)	
Vs.	)	No.25A05-0405-CR-243
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULTON CIRCUTI COURT
The Honorable Douglas B. Morton, Judge
Cause No. 25C01-0310-FC-73

January 14, 2005

Filed-Stamped: January 14, 2005

OPINION-FOR PUBLICATION

MATHIS, Judge

Carl Richard ("Richard") was convicted of Class C felony dealing in marijuana in Fulton circuit Court. Richard Appeals his conviction arguing that the trial court abused it discretion when it admitted evidence seized during the search of his residence and outbuildings because the search warrant was not supported by probable cause. Concluding that the search warrant was supported by probable cause, we affirm.

Facts and Procedural History

On October 13, 2003, Rochester City Police Office Matt Campbell ("Officer Campbell") was contacted by Patty Keim ("Keim"), a counselor at Riddle Elementary School. Keim that she had discovered marijuana on her father's property where she was living. Tr. P. 25. Officer Campbell proceeded to the school where he met with Keim, the school principal, and C.R.

As a result of his conversation with eight-year-old C.R., on that same day, Officer Campbell applied for a search warrant and submitted a probable cause affidavit, which provides in pertinent part:

Matt Campell, being first duly sworn, upon his oath says the following:

1. That he is a law enforcement officer with Rochester City Police.
2. That he believes and has good cause to believe that certain things, namely marijuana and items of contraband are concealed in or upon the following described property in Fulton County, Indiana: 2183 West 500 North
   Rochester, IN 46975
   Including House and Barn and Outbuildings